

# 9-64.000

## PROTECTION OF GOVERNMENT FUNCTIONS -- COUNTERFEITING, POSTAL VIOLATIONS, FALSE PERSONATION AND FALSE IDENTIFICATION

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- 9-64.111 Counterfeiting -- 18 U.S.C. § 489 -- Prosecution Policy
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### 9-64.111 Counterfeiting -- 18 U.S.C. § 489 -- Prosecution Policy

Sections 489 and 475 of Title 18 are in essence copyright statutes. However, in the past the Department has sought to limit their application--to avoid a multitude of prosecutions for trivial violations. Prosecution under 18 U.S.C. § 489 has been limited to those instances in which the token or device in question has some potential for being mistaken for a genuine coin by the ignorant or unwary. In this regard, the Department and Secret Service have agreed that no prosecution should be undertaken under 18 U.S.C. § 489 for a token or device which is more than twice the size of a silver dollar or less than half the size of a dime. In gauging whether a token or device which is more than half the size of a dime but less than the size of a silver dollar is appropriate for prosecution, the additional factors of color and design should be closely scrutinized. The Fraud Section of the Criminal Division has supervisory authority over these statutes.

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**The following sections of the Criminal Resource Manual contain additional information related to counterfeiting prosecutions under 18 U.S.C. § 478 or 18 U.S.C. § 489**

Counterfeiting -- 18 U.S.C. § 489	Criminal Resource Manual at 1460
Counterfeit Foreign Obligations or Securities -- 18 U.S.C. § 478	Criminal Resource Manual at 1461

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### 9-64.133 Prosecution Policy -- 18 U.S.C. § 495 or § 510

Since the enactment of 18 U.S.C. § 510, it has been the position of the Criminal Division that 18 U.S.C. § 510 merely supplements 18 U.S.C. § 495 and that it was neither drafted by the Department nor enacted by the Congress for the purpose of repealing 18 U.S.C. § 495. As a result, in cases in which criminal activities have fallen under the proscription of 18 U.S.C. §§ 495 and 510, the Criminal Division has advised that the case may be prosecuted under either statute.

Prosecutive decisions should be made on a case-by-case basis in accordance with the requirements of the particular case and Department policy. Thus, for example, a forgery of a Treasury check with a face value under \$500, while prosecutable as a misdemeanor under 18 U.S.C. § 510(c), could nevertheless be prosecuted as a

felony under 18 U.S.C. § 495 if the defendant is a repeat offender or involved in ring activity. A case involving the forgery of several instruments exceeding \$500 in aggregate value could be brought under the misdemeanor provision of 18 U.S.C. § 510(c) if the facts warrant (by not including all the instruments in the charge), or if brought under 18 U.S.C. § 495 or § 510(a), could be plea negotiated to a misdemeanor under 18 U.S.C. § 510(c). As a general rule, however, when the choice is between charging under the felony provisions of either 18 U.S.C. § 495 or § 510, the Criminal Division prefers charging under 18 U.S.C. § 510 because of the greater penalties available for violations of that section.

The primary thrust of the Department's enforcement program under 18 U.S.C. §§ 495 and 510 is aimed at the organized rings of check forgers and the professional forger who engages in multiple and repeated violations. Efforts should be made to obtain state or local prosecution of persons who engage in a relatively small number of forgeries and who have no prior history of this type of criminal conduct. The Fraud Section, Criminal Division, has supervisory authority over these statutes.

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**For additional information relating to prosecutions under 18 U.S.C. § 495 and 18 U.S.C. § 510, see the following sections of the Criminal Resource Manual**

Forged Endorsements Charged Under 18 U.S.C. §§ 495 or 510	Criminal Resource Manual at 1462
Elements of Offenses -- 18 U.S.C. § 495	Criminal Resource Manual at 1463
Sections 495 and 510 Distinguished	Criminal Resource Manual at 1464

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## **9-64.134 Prosecution Policy -- Interspousal Forgery of Government Checks**

It is the general policy of the Department not to prosecute for the interspousal forgery of government checks, because this type of forgery usually emanates from a domestic dispute and is better resolved through either state prosecution or civil litigation. An exception to the general rule against federal prosecution exists where there is independent evidence of intent to defraud, e.g., a court order prohibiting negotiation of a Treasury check, or where there are aggravating circumstances present.

## **9-64.200 Postal Offenses**

The Terrorism and Violent Crime Section (TVCS) has supervisory authority over violations of 18 U.S.C. § 2114 and § 1715 and, when the nonmailable article is an explosive or is intended to cause violent injury to a person or property, § 1716. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

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**See the following sections of the Criminal Resource Manual for a discussion of the law relating to various postal violations**

Postal Money Orders -- 18 U.S.C. § 500	Criminal Resource Manual at 1465
Robbery or Theft of Mail, Money or Property of the United States -- 18 U.S.C. § 2114	Criminal Resource Manual at 1466
Use of Magistrate to Reduce Postal Violation Caseload	Criminal Resource Manual at 1467
Misdemeanor for Postal Crimes	Criminal Resource Manual at 1468

## **9-64.300 False Personation**

Title 18 U.S.C. § 912 prohibits false personation of officers or employees of the United States. The Fraud Section of the Criminal Division has supervisory authority this statute.

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**For more information on prosecutions relating to False Personation, see the following sections of the Criminal Resource Manual**

False Personation -- Purpose of the Statute	Criminal Resource Manual at 1469
False Personation -- Elements of the Offenses	Criminal Resource Manual at 1470
False Personation -- Methods of Proof	Criminal Resource Manual at 1471
Definition -- "Falsely"	Criminal Resource Manual at 1472
Element Issue -- 18 U.S.C. § 912 -- Intent to Defraud	Criminal Resource Manual at 1473
Element of 18 U.S.C. § 912 -- "Acts as Such"	Criminal Resource Manual at 1474
Element of 18 U.S.C. § 912 -- "Acts as Such"	Criminal Resource Manual at 1474
Element of 18 U.S.C. § 912 -- Demanding or Obtaining a Thing of Value	Criminal Resource Manual at 1475
Element Issue -- 18 U.S.C. § 912 -- "Acting Under Authority"	Criminal Resource Manual at 1476
Criminal Division Recommendation -- 18 U.S.C. § 912	Criminal Resource Manual at 1477

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## **9-64.400 False Identification -- 18 U.S.C. § 1028**

The False Identification Crime Control Act of 1982 created 18 U.S.C. § 1028 (Fraud and Related Activity in Connection with Identification Documents) and 18 U.S.C. § 1738 (Mailing Private Identification Documents without a Disclaimer).

Sections 1028 and 1738 of Title 18 do not specifically assign investigative responsibility guidelines for the federal investigative agencies. Primary investigative authority for state and foreign government identification documents is assigned to the Secret Service. In regard to 18 U.S.C. § 1738, the Postal Inspection Service has investigative responsibility when the private identification document was transported through the United States mails; otherwise the FBI has investigative jurisdiction over 18 U.S.C. § 1738 violations. The Fraud Section of the Criminal Division has supervisory authority over cases involving prosecutions under sections 1028 and 1738.

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**See the following sections of the Criminal Resource Manual for additional information related to prosecutions involving False Identification:**

False Identification -- Overview	Criminal Resource Manual at 1501
Prosecuting Violations	Criminal Resource Manual at 1502
Identification Documents	Criminal Resource Manual at 1503
Purpose of 18 U.S.C. § 1028	Criminal Resource Manual at 1504
Covered Instruments	Criminal Resource Manual at 1505
Governmental Issuers	Criminal Resource Manual at 1506
Types of Identification Documents	Criminal Resource Manual at 1507
Specifically Mentioned Identification Documents	Criminal Resource Manual at 1508
Operative Terms	Criminal Resource Manual at 1509
Culpable States of Mind	Criminal Resource Manual at 1510
Critical Nonjurisdictional Terms	Criminal Resource Manual at 1511
Prohibited Acts	Criminal Resource Manual at 1512

Federal Jurisdiction	Criminal Resource Manual at 1513
United States Identification Document	Criminal Resource Manual at 1514
United States Document-Making Implement	Criminal Resource Manual at 1515
Possession With the Intent to Defraud	Criminal Resource Manual at 1517
Is In or Affects Interstate or Foreign Commerce	Criminal Resource Manual at 1518
Transported in the Mail	Criminal Resource Manual at 1519
New Offense -- Related to Unlawful Interception of Communications Under 18 U.S.C. § 2516	Criminal Resource Manual at 1520
Penalties	Criminal Resource Manual at 1521
Venue	Criminal Resource Manual at 1522
Unit of Prosecution -- Selection of Counts	Criminal Resource Manual at 1523
Exceptions for Law Enforcement Activities	Criminal Resource Manual at 1524
False Identification -- Immigration Matters -- 18 U.S.C. § 1541-1546	Criminal Resource Manual at 1525